

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 16, 17 and 22-25 were pending in this application when last examined and stand rejected. The Examiner is respectfully requested to clarify the pending claims in the next Office Action.

Claim 16 and the specification are amended to recite “*Vargula hilgendorfi*” instead of “*Cypridina noctiluca*”. The recitation of *Cypridina noctiluca* is a typographical error without deceptive intent. Applicants further note that, as shown in the attached Declaration, the correct term is *Vargula hilgendorfi*. Applicants further attest that, as shown in the attached Declaration, a person of skill in the art would understand that *Cypridina noctiluca* is a typographical error and should read *Vargula hilgendorfi*. Thus, such amendment to claim 16 and the specification are not new matter.

Applicants further point to the evidence shown in the Declaration to show that such amendment to claim 16 is a correction of a typographical error and not new matter. In particular, as noted by the Examiner, SEQ ID NOs: 1 and 2 of the specification are *Vargula hilgendorfi* sequences. Further, as noted in the Declaration, page 4 of the specification indicates that any embodiments [1] to [12] given in the specification can be SEQ ID NO: 1. It is noted that embodiment [9] is indicated as *Cypridina noctiluca* but, as noted on page 4, *Cypridina noctiluca* is indicated as possibly being SEQ ID NO: 1. Thus, a person of skill in the art would understand that *Cypridina noctiluca* is a typographical error and instead should read *Vargula hilgendorfi*.

No new matter has been added by the amendments to the claims and specification.

On pages 3-5 of the Office Action, claim 25 was rejected under 35 U.S.C. § 112, second paragraph, for insufficient antecedent basis for *Cypridina noctiluca*. This rejection is overcome, as applied to the amended claims, for reasons which are self-evident.

Further, on pages 5-7, claims 16, 17 and 22-25 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Office contends that the specification does not support *Cypridina noctiluca*. Thus, this rejection is overcome, as applied to the amended claims, for reasons which are self-evident.

Finally, on pages 7-10, claims 16, 17 and 22-25 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In particular, as noted on page 9 of the Office Action, the Office contends that Applicants were not in possession of a monitor protein comprising *Cypridina noctiluca* luciferase but were rather in possession of a monitor protein comprising *Vargula hilgendorfi*. Thus, this rejection is overcome, as applied to the amended claims, for reasons which are self-evident.

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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